

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

CONAGRA FOODS PACKAGED FOODS COMPANY, INC.,

Employer,

Case No. 27-RC-8389

and

UNITED FOOD AND COMMERCIAL WORKERS LOCAL 368-A,

Petitioner.

DECISION AND DIRECTION OF ELECTION

On May 20, 2005, United Food and Commercial Workers Local 368-A, herein called "the Petitioner," filed a petition under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as "the Act," seeking to represent a unit of employees of ConAgra Foods Specialty Potato Products/Lamb Weston, consisting of all regular full-time maintenance, utilities, waste treatment, and electrical employees, excluding regular full-time production and quality assurance employees and all part-time, temporary, supervisory, and clerical employees, and all security guards.

On June 2 and 3, 2005, a hearing was held before a hearing officer of the National Labor Relations Board. At the hearing, the Petitioner amended its petition to reflect that the employer's correct name is ConAgra Foods Packaged Foods Company, Inc. ("the Employer"). The Petitioner also amended its proposed unit description to include all regular full-time and regular part-time maintenance, utilities, waste treatment, and electrician employees, and to exclude regular full-time production and quality

assurance employees and all casual, temporary, supervisory, and clerical employees and all security guards.

The first issue to be addressed is whether the Employer's production employees must be included in the unit, along with the petitioned-for maintenance employees, for it to be an appropriate one. The Petitioner contends that the maintenance employees in the petitioned-for unit are a distinct and homogeneous group of employees with interests separate from the production employees. In contrast, the Employer contends that the maintenance employees share a community of interest with the production employees such that the petitioned-for unit is not appropriate for bargaining.

The second issue to be addressed is whether stockroom attendants, receiving clerks, maintenance purchasing employees, maintenance planning employees, and/or process control technicians must be included in the bargaining unit. The Petitioner contends that they should be excluded from the unit, while the Employer contends that they must be included.

As discussed further below, I conclude that the Petitioner's petitioned-for unit of maintenance department employees is appropriate, without inclusion of the production employees, stockroom attendants, receiving clerks, maintenance purchasing employees, or maintenance planning employees. However, I conclude that the unit must include the process control technicians.

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board. The parties stipulated, and I find, that the Employer is a Delaware corporation, engaged in the operation of a plant located at 856 Russet Street in Twin Falls, Idaho, where it manufactures frozen potato products. Annually, the Employer sells and ships from its Twin Falls facility goods and materials valued in excess of \$50,000 directly to points located outside the State of Idaho.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

5. It is appropriate to direct an election in the following group of employees of the Employer, who constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time maintenance mechanics, electricians, fabrication mechanics, utility employees, waste water treatment employees, and process control technicians employed by the Employer at its facility at 856 Russet Street in Twin Falls, Idaho;

EXCLUDED: All full-time and regular part-time production employees, quality assurance employees, stockroom attendants, receiving clerks, maintenance purchasing employees, maintenance planning employees, casual employees, temporary employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

FINDING AND CONCLUSIONS

A. THE PETITIONED-FOR UNIT OF MAINTENANCE EMPLOYEES IS APPROPRIATE WITHOUT INCLUSION OF THE PRODUCTION EMPLOYEES

1. Factual Findings

a. Organizational structure and production/maintenance operations

The Employer operates a facility at Twin Falls, Idaho, at which it produces frozen potato products, such as french fries, hash browns, mashed potatoes, and tater tots.

The facility has nine processing lines, through which raw potatoes are processed into final products. All the processing lines are located in the same building. The facility operates 24 hours per day, 7 days per week, over three shifts. The shift hours run from 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m.

The facility's processing cycle involves several steps. Operations begin when the facility receives raw potatoes from its suppliers. Employees in the cellar area sort the raw potatoes and send them to the processing lines. As the potatoes enter the various lines, they are placed in an "even-flow" containment system. From the containment system, the potatoes pass through a steam peeling system, where the skins are removed. After peeling, the potatoes pass over inspection or trim tables, where trimmer employees inspect for foreign material or defects. Next, the potatoes are pumped to a preheating system, where they are warmed up as part of preparation for cutting.¹ At the cutting stage, the potatoes are dropped into tanks, where water pumps push them into cutting blocks to slice the potatoes according to specifications. Once any slivers and/or shards are removed, the potatoes are cooked. After the potatoes are

¹ Some of the processing lines do not have a preheating system.

cooked, they pass through a frier. At that point, the potatoes are frozen and then reinspected. The product then goes to the packaging area, where the processed potatoes are weighed, bagged, packed into cases, placed onto pallets, and then moved into a warehouse to be made part of inventory.

The Employer employs approximately 670 plant employees. The plant has seven departments, consisting of production, maintenance, field, human resources, accounting, quality assurance, and information services. The production department and the maintenance department have separate budgets. There are approximately 542 production employees and approximately 124 maintenance employees. The production employees and the maintenance employees work on all three shifts.

There are approximately 38 job classifications in the maintenance department. The Employer's job code list for the maintenance department includes the following positions: electrical maintenance, utility operator, maintenance mechanic, fabrication mechanic, and waste water operator. The classifications include maintenance lead positions. The maintenance employees work throughout the plant, maintaining and repairing equipment. They frequently work on the production floor, because much production equipment cannot be moved to maintenance shops. Even though the maintenance employees frequently work on the production floor, their function does not include direct participation in processing raw potatoes into final product.

There are approximately 55 job classifications in the production department, including, for example, various types of operators, packagers, quality control technicians, and sanitation workers. Most of the employees in the production department are responsible for handling the processing of raw potatoes into final

products. The sanitation employees handle cleaning tasks, such as washing down equipment and wiping up spills. As discussed below, seven of the production employees are classified as sanitation mechanics, otherwise referred to in the record as sanitation/maintenance employees.

b. Supervision and discipline

The head of the maintenance department is Dave Kubosumi, who is classified as the Engineering Manager. Maintenance Engineers Homer Abram and John Neal report to Kubosumi. Under Maintenance Engineers Abram and Neal, are four maintenance supervisors: Mike Knight, Don Kaes, R.C. Cummings, and Dennis Gilbert. The four maintenance supervisors each have responsibility for one of four groups within the maintenance department. The groups are electrical maintenance, utilities maintenance, packaging maintenance, and processing maintenance. Knight is responsible for the electrical group. Kaes handles the utilities group. Cummings supervises the packaging group. Gilbert has supervisory responsibility for the processing group. Cummings and Gilbert report to Maintenance Engineer Abram, and Knight and Kaes report to Maintenance Engineer Neal.²

The maintenance supervisors primarily work Monday through Friday, from approximately 6:00 or 6:30 a.m. to 4:00 or 5:00 p.m. During their absence, maintenance leads are involved in directing the work of the other maintenance

² The parties stipulated that Kubosumi, Abram, Neal, Knight, Kaes, Cummings, and Gilbert are statutory supervisors who are to be excluded from the appropriate unit, and the record supports the parties' stipulation in that regard. The parties also stipulated that two project engineers, Kevin Petersen and Ben Hawkes, should be excluded on the grounds that they are professional employees within the meaning of Section 2(12) of the Act, and I shall exclude professional employees from the appropriate unit determined.

employees.³ The leads distribute work orders to their maintenance employees. The leads also have a limited role in determining whether maintenance employees receive promotions; however, it is clear that the stipulated supervisors make any decisions regarding promotions based upon their independent knowledge of the maintenance employees' work performance.

Production Manager Jeff Jermunson is the head of the production department, with overall responsibility for production. Several production unit superintendents and supervisors report to Jermunson. Those superintendents and supervisors are the following: Production Superintendents Larry Greenwalt and Rob Roche; Shift Supervisors Todd McBride, Doug Share, Chuck Shirey, and Kenny Kniep; Sanitation Supervisor Bret Preece; Production Supervisor Preston Hart; and Warehouse Manager Dwight Carey. There also are six production supervisors who report to the shift supervisors. The production supervisors are Jeff Glenn, Bob Castro, Larry Rogers, Leroy Tucker, Ruth Buchholz, and Jamie Marzitelli. Inventory Supervisor Brenda Harney reports to Warehouse Manager Dwight Carey.

Production Manager Jermunson testified that, when maintenance supervisors are not present, the production supervisors have some authority to direct the maintenance employees. However, the record does not disclose the exact nature of such authority. Jermunson also testified that the production supervisors have authorized maintenance employees to work overtime and that they had called in extra maintenance employees

³ The parties stipulated that the maintenance leads are employees who may be included in an appropriate unit.

to complete work. Again, the record does not show how often production supervisors have authorized extra maintenance overtime or called in extra maintenance employees.

The record reflects that production supervisors occasionally have recommended discipline of maintenance employees. Specifically, Production Manager Jermunson testified that, approximately one to two years ago, Production Shift Supervisor Todd McBride recommended that some corrective action be taken against a maintenance employee. Jermunson did not recall the exact nature of the recommended action, but he believed that the employee was disciplined. Human Resource Department Supervisor Cheryl Phillips generally testified that a few maintenance employees had received discipline after production supervisors had complained to the maintenance supervisor. The record does not reflect what, if any, independent investigation the maintenance supervisor may have undertaken prior to issuing the discipline. The record does show that, in those situations, the maintenance supervisor issued the discipline, not the production supervisor.

c. Skills

The maintenance employees have knowledge and skills related to handling preventive maintenance and periodic repairs on the various pieces of equipment that the Employer uses in its production process. That equipment includes conveyors, sprockets, bearings, chains, motors, fans, pumps, flumes, sizing equipment, friers, coolers, freezers, baggers, and packaging equipment. The maintenance employees generally have higher technical skills than do the production employees. The maintenance employees take care of problems that go beyond routine operational adjustments that production employees make. When there is a problem that requires

more than a simple adjustment, such as an equipment breakdown, the maintenance employees handle it. In performing their jobs, the maintenance employees use an extensive set of tools, which production employees are not called upon to use.

The Employer does not require the maintenance employees to serve an apprenticeship, either before hire into a maintenance position or after hire into such a position. Most of the maintenance employees do not have licenses or certifications in their fields, although some of the electricians and wastewater employees are licensed. The wastewater employees do not need to be certified when the Employer hires them, but they must have a certification to advance in the pay scale.

Some production employees perform basic maintenance tasks. For example, area operators who run processing equipment use basic tools, such as box end wrenches and crescent wrenches, to adjust their equipment. During scheduled shutdowns, other production employees take care of odd jobs like painting, replacing filters, and demolishing old piping conduit.⁴

The seven sanitation/maintenance employees within the production department have higher maintenance skills than the other production employees. The Employer created the sanitation/maintenance classification within the production department because a need arose for sanitation employees with mechanical skills to focus on maintaining and repairing the sanitation equipment. They maintain a central chemical dispensing system, which involves making pump repairs and replacements and piping

⁴ The Employer usually assigns approximately 12 to 15 production employees to handle odd jobs during shutdowns. It maintains a list of 19 production employees who are qualified to do that work. One of those 19 employees, Rene Cantu, handles odd jobs, such as exterior building maintenance, grounds keeping, and painting throughout the year, not just during scheduled shutdowns. Each of these 19 employees is supervised by a production supervisor.

modifications. They also perform other maintenance on sanitation equipment, such as replacing and repairing hoses, however, there is no record evidence that they work on equipment other than sanitation equipment. These seven sanitation/maintenance employees are supervised by Production Supervisor Bret Preece, who, as noted above, supervises other production employees, but no maintenance department employees.

Also included in the production department are one ADR specialist and two ADR operators. They work with optical equipment to locate defects in the product. As part of their duties, they work with the area operators and help them troubleshoot the optical vision systems that locate and remove defective product. When problems surface with this optical equipment, the ADR specialist and two ADR operators work with the vendors that supply the equipment, and they test power sources, replace power supplies, and repair cameras, as necessary. The ADR specialist, Roger McBride, previously had worked in the maintenance department's electrical group. The two ADR operators previously had worked in production positions. They are supervised by a production supervisor.

d. Wages, benefits, and work rules

The production employees and the maintenance employees are paid on an hourly basis. They keep track of their work time through the same time-keeping system.

The Employer's most recent wage schedule, effective July 2004, sets forth several pay grades: G-2 through G-7, SM-1 through SM-4, MH through M-5, EH through E-4, FM-2 through FM-5, U-1 through U-5, and WW-OIT through WW-4. Each pay grade has an associated hourly wage rate. The range for each grade is as follows:

| <u>Grade</u> | <u>Range</u> |
|---------------------|--------------------|
| G2 through G7 | \$10.44 to \$14.77 |
| SM-1 through SM-4 | \$12.31 to \$17.05 |
| MH through M-5 | \$12.36 to \$19.97 |
| EH through E-4 | \$13.95 to \$23.13 |
| FM-2 through FM-5 | \$16.38 to \$20.24 |
| U-1 through U-5 | \$15.42 to \$20.89 |
| WW-OIT through WW-4 | \$12.04 to \$15.61 |

The G grade applies to the production employees, and the SM grade applies to the sanitation/maintenance employee in the production department. The M, E, FM, U, and WW grades apply to employees in the maintenance department. Specifically, the M, E, FM, U, and WW grades apply, respectively, to the mechanics, electricians, fabrication mechanics, utility employees, and waste water employees.

Although the maintenance employees and the production employees have different pay grades, their other benefits are identical. Additionally, the Employer's policies, including those set forth in the employee handbook, apply equally to maintenance and production employees.

e. Contact

The production and maintenance departments coordinate their respective activities to ensure as little disruption as possible in the production process. Production supervisors meet with maintenance supervisors every morning to review the previous day and to discuss coordination of production and maintenance needs.

Production employees talk daily to maintenance employees concerning operational issues. For example, production employees with responsibility for freezing the product communicate with refrigeration mechanics to make sure that the proper temperatures are maintained. Production department operators also talk to maintenance employees about repairs on equipment.

Maintenance employees frequently work on the floor, in the vicinity of production employees, to repair processing line equipment that the production employees use.⁵ Production employees may assist maintenance employees by getting tools and/or parts that the maintenance employees need to make repairs, by handing tools and parts to the maintenance employees as they are performing maintenance work, and by helping in the dismantling of equipment. Production employees also serve as “fire watch” during scheduled shutdowns when maintenance employees are doing work that potentially could result in fire, such as cutting, welding, or grinding.⁶ Additionally, production employees clean up areas where maintenance employees work on equipment in production areas, both before maintenance starts its work and after maintenance has completed its work in production areas.

Production employees and maintenance employees also attend some meetings together. They serve together on the plant safety committee, which meets once per week, and some training is conducted jointly.

⁵ Maintenance employees also work in various maintenance shops that are located throughout the facility in the vicinity of processing lines.

⁶ The Employer maintains a list of three production employees who serve fire-watch duty.

f. Interchange and transfer

Production employees and maintenance employees do not regularly fill in for each other on a temporary basis. Generally, the production employees handle production tasks, and the maintenance employees handle maintenance tasks.

In situations in which the Employer needs to fill a position temporarily (for example, when an employee goes out on extended leave or the Employer is reorganizing), the Employer uses a temporary bid system to fill the available slot. However, the only specific evidence provided in that regard was the testimony of Human Resource Supervisor Phillips that two production employees temporarily have filled positions in the maintenance utilities group.

Also, when maintenance employees have been injured, the Employer has assigned them to production jobs, such as working at the inspection or trim tables, as part of a light duty assignment. The record reflects that over approximately the last year, two maintenance employees, Bill Payne and Janet Duggan, were assigned to inspection or trim tables as a light duty assignment.

As noted above, during extended shutdowns of two to three days or more, some production employees serve as temporary maintenance helpers to help the regular maintenance employees. To identify possible candidates to fill maintenance helper positions, the Employer solicits volunteers from the ranks of the production employees. From the group of volunteers, the Employer selects those production employees it will use to serve as maintenance helpers. During the fiscal year June 2004 through May 2005, the Employer budgeted for five weeks of downtime and had four actual weeks of downtime. The Employer usually needs six or seven maintenance helpers to assist

maintenance mechanics on a temporary basis during scheduled shutdowns.⁷ The helpers assist on tasks such as pulling bearings and chains, replacing sprockets and hubs, and gathering tools. Maintenance helpers are not required to provide their own tools. When the production employees are working as maintenance helpers during shutdowns, they are supervised by the maintenance supervisors. As the maintenance helpers perform their assigned duties, the maintenance department supervisory personnel try to train them in how maintenance performs its duties. Additionally, the supervisors evaluate the maintenance helpers to determine which of them may be good hires for regular maintenance positions as vacancies arise.

With regard to permanent interchange between the production and maintenance departments, the evidence establishes that it is common for production employees to eventually become maintenance employees. In that regard, Human Resource Supervisor Phillips testified that of 124 current maintenance employees, approximately 64 of them previously had worked as production employees. Production Manager Jermunson testified that 70 or 71 maintenance employees had been production employees. Some of the production employees who became maintenance employees had previously served as maintenance helpers during scheduled shutdowns; however, the record does not disclose exactly how many maintenance helpers subsequently became regular maintenance employees. Production employees are eligible to apply for maintenance positions through a bid system. When the Employer needs to fill a maintenance position, it posts the position on a bulletin board. All employees, including

⁷ The Employer maintains a list of 12 production employees who are qualified to serve as maintenance helpers.

production employees, are eligible to apply by submitting a bid to fill the position. The Human Resources office gathers the bids and passes them to the department supervisor who makes the initial hiring decision.

There is less evidence concerning maintenance employees moving into production department jobs. The record evidence shows only that the current ADR specialist, Roger McBride, previously had worked as an electronics technician in the maintenance department's electronics group.

g. Miscellaneous

Production employees and maintenance employees use the same parking lot, plant entrance, time clocks, and locker areas. For the most part, they also have use of common facilities such as a cafeteria and outdoor eating areas.⁸ Production employees wear plastic bump caps, while maintenance employees wear hard hats. They all wear name tags. The Employer has an annual summer picnic that all employees may attend. It also hosts an annual Christmas party for all employees.

h. Bargaining history

There is no history of collective bargaining at the Employer's facility involved in this case.

2. The Maintenance Department Employees Have Their Own Community of Interest

It is the Board's longstanding policy, as set forth in American Cyanamid Co., 131 NLRB 909 (1961), to find petitioned-for separate maintenance department units

⁸ Maintenance employees in the utility group are not able to make full use of the cafeteria, because they have to take their breaks in designed areas within the engine rooms so that they can monitor systems. They can use the cafeteria to purchase items to bring back to their designated areas.

appropriate in the absence of a more comprehensive bargaining history and where the facts of the case demonstrate that the maintenance employees have a community of interest separate and distinct from other employees. See Ore-Ida Foods, 313 NLRB 1016, 1019 (1994); TDK Ferrites Corp., 342 NLRB No. 81, slip op. at 3 (2004); Buckhorn, Inc., 343 NLRB No. 31, slip op. at 2 (2004). In determining whether a sufficient separate community of interest exists, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. Id.

Based on my review of the record and examination of the pertinent Board precedent, I find that the petitioned-for unit of maintenance employees is an appropriate unit. Several factors support that conclusion.

First, the Employer's maintenance department is separate from its other departments. The Employer's organizational chart shows that maintenance is its own department. Additionally, witness testimony shows that maintenance has its own budget. The inclusion of the petitioned-for unit of employees in their own department separate from production weighs in favor of a finding that the proposed unit is appropriate. See American Cyanamid, 131 NLRB at 910.

The evidence also demonstrates that the Employer has maintenance supervisors whose job is to supervise the maintenance employees. As set forth above, each of the groups within the maintenance department has an assigned first-line maintenance supervisor. Those first-line supervisors report to two supervisory maintenance engineers who, in turn, report to the engineer manager. The existence of that

supervisory hierarchy with responsibility for the maintenance employees also supports the Petitioner's contention that its proposed unit of maintenance employees is appropriate. See, e.g., id.; Sundor Brands, Inc., 334 NLRB 755, 758 (2001).

Additionally, the evidence demonstrates that the petitioned-for maintenance employees are not directly involved in production functions. The production employees exclusively handle production, while the maintenance employees serve a support role for production. The maintenance employees' performance of a function that is unique to their classification further demonstrates that they have distinct interests separate and apart from production employees. See, e.g., Capri Sun, Inc., 330 NLRB 1124, 1125 (2000).

Moreover, the maintenance employees have higher skills than most of the production employees. The maintenance employees are responsible for handling substantial maintenance and repair tasks. In contrast, most of the production employees do not handle any maintenance and repair tasks. Those production employees who do handle some maintenance and repair tasks generally do so only with regard to relatively minor, routine adjustments. The Board has held that maintenance employees' higher skill level demonstrates that they a community of interest separate from other employees. See, e.g., Sundor Brands, Inc., 334 NLRB at 757.

Reflecting their higher skill level, the maintenance employees generally receive higher wages than the production employees. Most of the production employees fall in the G grades, which run from \$10.44 to \$14.77 per hour. In contrast, the various types of maintenance employees start at and top out at significantly higher hourly wages. The Board has relied on significant wage disparities between maintenance employees and

other employees to warrant maintenance employees' inclusion in their own separate bargaining unit. See, e.g., id.

The evidence also demonstrates that there is no significant temporary interchange between maintenance employees and production employees. The maintenance employees and the production employees generally do not fill in for each other. Although there have been a couple of situations in which the Employer temporarily filled maintenance positions with production employees and transferred maintenance employees to production positions as part of light duty assignments, those practices appear to have been isolated and sporadic. Nor does the evidence concerning the Employer's use of production employees to serve as maintenance helpers constitute persuasive evidence that a unit of maintenance employees is not appropriate. While the maintenance helpers assist the maintenance employees, they do so on a volunteer basis. The Board has found the significance of temporary interchange to be diminished where it was voluntary. See Capri Sun, Inc., 330 NLRB at 1125 (citing Red Lobster, 300 NLRB 908, 911 (1990)). Additionally, the maintenance helpers are not qualified to perform the substantial maintenance and repair work that the regular maintenance employees are required to perform. In similar circumstances, the Board deemed that an employer's practice of having a few production employees serve as maintenance assistants during plant shutdowns was insufficient to establish meaningful temporary interchange that arguably would support a determination that a maintenance-only unit was inappropriate. See, e.g., Ore-Ida Foods, 313 NLRB 1016, 1020 (1994); Lawson Mardon U.S.A., 332 NLRB 1282, 1284-1285, 1287 (2000).

While there is evidence of permanent interchange between maintenance and production, I conclude that it does not render the petitioned-for unit inappropriate. According to Human Resource Supervisor Phillips, just over 50 percent of the current employees in the maintenance unit previously had worked in production jobs. However, permanent transfers weigh less heavily than temporary interchange in assessing the community of interest shared by maintenance and production employees. See Ore-Ida Foods, 313 NLRB at 1020 n.4; Red Lobster, 300 NLRB at 911; Franklin Mint Corp., 254 NLRB 714, 716 (1981).

3. The Employer's contentions do not demonstrate that the petitioned-for unit is inappropriate

In contending that a separate unit of maintenance employees is not appropriate, the Employer relies on evidence showing, among other things, that there is contact and communication between maintenance employees and production employees and an overlap in their duties, and that the production supervisors have authority over maintenance employees at times. The Employer also contends that bargaining history in the industry supports its position that a maintenance-only unit is not appropriate. Additionally, the Employer contends that Board precedent supports its contention that the petitioned-for maintenance unit is not appropriate. As discussed below, none of those contentions demonstrates that the petitioned-for unit is inappropriate.

To be sure, the record demonstrates that the maintenance employees frequently interact and communicate with the production employees and that their functions overlap. However, interaction and communication is an inherent aspect of the performance of maintenance functions. In Sundor Brands, Inc., 334 NLRB at 757-758

(2001), the Board rejected the proposition that such interaction and communication rendered a maintenance-only unit inappropriate. As the Board stated:

[A]lthough maintenance employees have contact with production employees on the production floor, this by itself does not establish a significant degree of functional integration. As in other industrial settings, the Respondent's maintenance employees must spend a considerable portion of their time around the equipment they service, which is located on the production floor. Nevertheless, the segregation of actual work functions between maintenance and production employees limits the extent to which the operations process depends on the unit employees. While all production processes ultimately depend on maintenance employees to keep them running, if mere physical proximity were sufficient to preclude a separate maintenance unit no such unit would ever be certified. The Board rejected such an outcome in 1961 when it began to allow departmental organization.

Additionally, much of the evidence relating to overlap in their functions pertains to production employees assisting maintenance employees by running for parts and tools and handing items to maintenance employees. The Board has determined that such assistance does not render a maintenance unit inappropriate, because "lending a hand" by performing minor tasks associated with maintenance work is unskilled and peripheral to the actual repair work done by maintenance employees. See, e.g., Yuengling Brewing Co. of Tampa, 333 NLRB 892, 893 (2001); Lawson Mardon U.S.A., 332 NLRB at 1284-1285, 1287; Ore-Ida Foods, 313 NLRB at 1020.

With regard to the Employer's reliance on production supervisors' authority over maintenance employees, the evidence shows that the production supervisors have some general authority to direct the maintenance employees when the maintenance supervisors are not present. However, as stated above, the record does not include specific information about the nature of that authority. In that regard, in response to a question about production supervisors' authority to direct maintenance employees on

“off shifts” and weekends, Production Manager Jermunson testified only that they have the ability to direct their work and that they had done so. His testimony did not describe more specifically what such direction involved, nor did it describe how often the production supervisors exercised direction of the maintenance employees’ work. Additionally, he acknowledged that maintenance supervisors have weekend duties, and that utility supervisors have worked weekends. Under those circumstances, I conclude that the record evidence is not sufficient to demonstrate that the petitioned-for unit of maintenance employees is not appropriate. The Board has declined to deem separate maintenance units to be inappropriate based on generalized evidence indicating that production supervisors have authority over maintenance employees. See, e.g., Yuengling Brewing Co. of Tampa, 333 NLRB at 892-893 (petitioned-for unit of maintenance employees not rendered inappropriate on grounds that production supervisors “supervised” some work of maintenance employees, where the record did not show the nature of that supervision); Lawson Mardon U.S.A., 332 NLRB at 1284-1285, 1287 (production supervisors authority to prioritize maintenance employees’ work during periods when regular maintenance supervisors were unavailable did not require inclusion of maintenance employees in petitioned-for unit of production employees).

Similarly, while the evidence shows that production supervisors may have recommended discipline of maintenance employees, the evidence does not show that any such recommendations constituted effective recommendations of discipline within the meaning of Section 2(11) of the Act. The record establishes that whenever production supervisors had problems with maintenance employees, the production supervisors reported the issue to the maintenance supervisor. The maintenance

supervisor imposed any resulting discipline. Under those circumstances, it appears the maintenance supervisors wielded the real power, and it cannot be said that the production supervisors exercised so much authority over the maintenance employees that a maintenance-only unit would be inappropriate. See, e.g., Yuengling Brewing Co. of Tampa, 333 NLRB at 892-893 (petitioned-for unit of maintenance employees not rendered inappropriate where the record did not show that production supervisors exercised any statutory supervisory authority over the maintenance employees such as discipline or effective recommendations of discipline).

At the hearing, the Employer introduced into the record several collective-bargaining agreements pertaining to its other food processing facilities and to other employer's processing facilities, which agreements applied to bargaining units consisting of both production and maintenance employees. Certainly, combined production and maintenance units are appropriate units. However, other possible units also may be appropriate, including maintenance-only units. See Overnite Transportation Co., 322 NLRB 723, 723 (1996) ("[i]t is well settled . . . that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining"). For the reasons discussed above, I have found here that the petitioned-for maintenance unit is an appropriate unit. Although it is arguable that a combined production and maintenance unit may be a more appropriate unit in some respects, the Petitioner is not obligated to seek the most appropriate or most comprehensive unit. See id.; American Hospital Association, 499 U.S. 606, 610 (1991). Accordingly, the existence of alternative units at other facilities does not persuade me that a maintenance-only unit here is not appropriate.

The Employer also contends that the facts of this case are similar to TDK Ferrites Corp., 342 NLRB No. 81 (2004), a case in which the Board deemed a petitioned-for unit of maintenance employees to be inappropriate. I conclude, however, that that case is distinguishable and that it does not compel a conclusion that the petitioned-for unit is not appropriate. Unlike here, in TDK Ferrites the petitioner sought to include employees from separate departments in the same bargaining unit. Additionally, while the maintenance employees here do not perform production work and have their own maintenance supervisors, a majority of the petitioned-for maintenance employees in TDK Ferrites frequently performed production work and were directly supervised by production supervisors. Further, unlike the case now under consideration, the employer hired its maintenance employees “almost exclusively” from the ranks of its production employees.

Additionally, the Employer contends that the Board’s decision Buckhorn, Inc., 343 NLRB No. 31 (2004), supports its contention that the petitioned-for unit is not appropriate. In Buckhorn, the Board determined that a petitioner’s requested maintenance-only unit was not appropriate. However, I find that that case is also distinguishable. The petitioned-for unit included 5 skilled maintenance employees and 14 other non-skilled maintenance employees who were classified in the other 4 job classifications. Unlike here, the non-skilled maintenance employees (who constituted a majority of the proposed unit) in Buckhorn did not have skills that distinguished them from production employees. Additionally, in contrast to this case, the non-skilled maintenance employees were involved directly in the production process and they reported to the production supervisor. Moreover, the evidence of permanent transfers

between production and maintenance weighed strongly in favor of a finding that the petitioned-for unit was inappropriate, as two-thirds of the maintenance employees had started as production employees.

The Employer also submits that the Petitioner's reliance on Ore-Ida Foods, 313 NLRB 1016 (1994), is misplaced because that case presented distinguishable facts. While the facts in Ore-Ida Foods are similar in some respects to this case and it provides some support for the Petitioner's position, I agree with the Employer that Ore-Ida Foods does not control this case. I base my decision here on the totality of the particular facts presented at the hearing.

B. THE PETITIONED-FOR UNIT OF MAINTENANCE EMPLOYEES IS APPROPRIATE WITHOUT INCLUSION OF THE STOCKROOM ATTENDANTS, RECEIVING CLERKS, MAINTENANCE PURCHASING EMPLOYEES, AND MAINTENANCE PLANNING EMPLOYEES, BUT THE PROCESS CONTROL TECHNICIANS MUST BE INCLUDED

1. Factual Findings

In addition to the maintenance employees discussed above, the Employer includes within its maintenance department the following job classifications: stockroom attendants, receiving clerks, maintenance purchasing employees, maintenance planning employees, and process control technicians.⁹ The stockroom attendants, receiving clerks, maintenance purchasing employees, and maintenance planning employees all are included in a group within the maintenance department, known as the purchasing group. This group is in addition to the four maintenance groups discussed

⁹ The Petitioner attached to its brief an employee phone list that purportedly shows that the maintenance purchasing clerks and the process control technicians are included in the production department, not in the maintenance department. That phone list was not made part of the record at the hearing. Accordingly, I attach no weight to it.

above. The head of the purchasing group is Purchasing Supervisor Ramon Guzman.¹⁰ The stockroom attendants, receiving clerks, maintenance purchasing employees, and maintenance planning employees all report to Guzman. Guzman reports to Homer Abram, one of the two maintenance engineers who, in turn, report to Engineering Manager Dave Kubosumi. The process control technicians are included in the electrical maintenance group, which is headed by Maintenance Supervisor Mike Knight. The process control technicians report to Knight, who reports to the other maintenance engineer, John Neal.

The stockroom attendants and receiving clerks work in the facility's stockroom. They are responsible for receiving parts and supplies for various places in the facility, storing them, and handing them out as needed. They handle such items for both production and maintenance. When production employees and maintenance employees need parts or supplies, they go to the stockroom window to pick up what they need. The stockroom attendants and receiving clerks work all three shifts. There are approximately nine such employees. Their pay is at the G grade level, which ranges from \$10.44 to \$14.77.

The maintenance planners assign work orders to various units that handle maintenance tasks, including the maintenance groups within the maintenance department and the sanitation and sanitation/maintenance employees in the production department. Once the work called for in a work order is completed, the maintenance planners collect the work order. They review the work order to ensure that the

¹⁰ The parties stipulated that Guzman is a statutory supervisor who is to be excluded from the appropriate unit, and the record adequately supports this stipulation.

employees completed the work. If the work was not completed, the maintenance planners contact the leads to have the remaining work done. When that work is complete, they close out the orders and maintain copies. The maintenance planners handle approximately 7000 work orders per month. Additionally, they look up parts and search through the facility to locate equipment. On rare occasions, when there is a major problem caused by employee absence, the Employer assigns them to maintenance work on the production floor. The maintenance planners have frequent contact with maintenance employees. They also have contact with production employees concerning work orders and the location of equipment. There are two maintenance planners. The two current maintenance planners, Judy Glux and Sean Hodge, receive hourly pay at the M-4 grade, which is \$18.84 per hour. Glux and Hodge previously had worked as mechanics in the maintenance department. The maintenance planners work on the day shift only.

The maintenance purchasing employees receive requisitions from supervisors for purchases of various supplies and parts needed throughout the facility for all departments, including production and maintenance. They track, price, and order all supplies and parts (not including product ingredients) used throughout the facility. The items that the maintenance purchasing employees order eventually get delivered to the plant, often to the stockroom. The maintenance purchasing employees have regular contact with maintenance employees and production employees. The maintenance purchasing employees receive hourly pay at the G grade. There are two maintenance purchasing employees, Sue Hill and Rogina Ordaz.

The process control technicians create computer programs that run the processing equipment that is used throughout the entire production line. They also troubleshoot remote sensors to make sure that they are functioning properly. That task brings them to the production floor, where they interact with production employees. They also interact daily with maintenance employees, primarily those in the maintenance department electrical and processing groups. For example, when maintenance employees identify a problem with equipment instruments which could be caused either by a problem with the instruments or by a computer programming issue, the maintenance employees call the process control technicians to check the computer program. The process control technicians handle programming problems, as opposed to mechanical problems, with instruments. In performing their troubleshooting functions, they use the same type of equipment as the maintenance electricians. There are three process control technicians: Phil Lutz, Jason Smith, and Darin Whittaker. Lutz had worked in the maintenance department's electronics group and Whittaker had worked in packaging maintenance. Smith was hired from outside. The pay range for the process control technicians is \$22.60 to \$24.51 per hour.

2. The stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees

Based on the record evidence, I conclude that the bargaining unit does not have to include the stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees. The evidence shows that the employees in those job categories have a community of interest with the petitioned-for maintenance employees. Accordingly, if the Petitioner sought to have them included in the unit, they could be included. However, given that the Petitioner does not seek to have them

included, the question is whether the relationship between them is so close that they must be included over the Petitioner's objection. I find that there are enough differences between them to warrant their exclusion from the unit.

First, the maintenance employees' job functions differ considerably from those of the stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees. While the maintenance employees work directly on equipment to maintain and repair it, the employees in the other categories do not do any of that work. The employees in those other categories basically serve a support role for maintenance (and for production). The Petitioner appropriately seeks a unit that includes only employees who perform skilled maintenance work directly on production equipment.

Second, the stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees have different first-line supervision than the maintenance employees. The stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees report to Purchasing Supervisor Guzman, while the maintenance employees report to Maintenance Supervisors Knight, Kaes, Cummings, and Gilbert. To be sure, Guzman is a supervisor within the maintenance department, but the evidence does not reflect that Guzman supervises any employees who directly perform maintenance or repair work on processing equipment. Thus, excluding stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees from the bargaining unit will not result in Guzman having to supervise both unit and nonunit employees.

Third, the stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees also have a community of interest with the production employees. In light of their connection with the production employees, it cannot be said that they must be included in a unit with the maintenance employees.

3. The process control technicians

The process control technicians present different considerations. For the reason set forth below, I find that the process control technicians must be part of the petitioned-for unit.

While Purchasing Supervisor Guzman supervises the stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees, he does not supervise the process control technicians. Rather, Maintenance Supervisor Knight supervises them. As discussed above, Knight also supervises the maintenance employees in the electrical group. Knight's common supervision of those two employee categories weighs strongly in favor of requiring that the process control technicians be included in the unit. Their exclusion from the unit would result in the division of Knight's common supervision of the two groups, with only some of the employees under his supervision being subject to representation by a collective-bargaining representative.

Additionally, the process control technicians are more directly involved in the maintenance process than are the stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees. The process control technicians work directly with the electrical maintenance employees in troubleshooting

remote sensors, using common equipment. The stockroom attendants, receiving clerks, maintenance planning employees, and maintenance purchasing employees are not similarly engaged in any work at the shop floor level.

Moreover, there is evidence of a substantial degree of permanent interchange between the process control technicians and maintenance. Two of the three current process control technicians previously held regular maintenance positions.

Furthermore, the process control technicians receive the highest pay, starting at \$22.60 per hour and reaching up to \$24.51 per hour. Their wage compensation puts them on a par with the regular maintenance employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.¹¹ Eligible to vote are those in the Unit as described above who are employed by the Employer during the payroll period ending immediately preceding the date of this Decision and Direction of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12

¹¹ Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

months before the election date, employees engaged in such strike, who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

UNITED FOOD AND COMMERCIAL WORKERS LOCAL 368-A

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days from the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700

North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-5433
on or before **July 20, 2005**. No extension of time to file this list shall be granted except
in extraordinary circumstances, nor shall the filing of a request for review operate to stay
the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a
request for review of this Decision and Direction of Election may be filed with the
National Labor Relations Board, addressed to the Executive Secretary, 1099 14th
Street, NW, Washington, DC 20570. This request must be received by the Board in
Washington by **July 27, 2005**. In accordance with Section 102.67 of the Board's Rules
and Regulations, as amended, all parties are specifically advised that the Regional
Director will conduct the election when scheduled, even if a request for review is filed,
unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 13th day of July, 2005.

Michael W. Josserand
Michael W. Josserand, Acting Regional Director
National Labor Relations Board
Region 27
700 North Tower, Dominion Plaza
600 Seventeenth Street
Denver, Colorado 80202-5433